

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TEMSA ULAŞIM ARAÇLARI SANAYI)
VE TICARET A.Ş.,)
)
Plaintiff,)
)
v.) Civil Action No. _____
)
CH BUS SALES LLC f/k/a)
CH TRADING COMPANY,)
)
Defendants.)

DEFENDANT'S NOTICE OF REMOVAL

Defendant CH Bus Sales LLC f/k/a CH Trading Company (“Defendant”), by its undersigned counsel, hereby removes the civil action captioned *Temsu Ulaşım Araçları Sanayi ve Ticaret A.Ş. v. CH Bus Sales LLC f/k/a CH Trading Company*, C.A. No. 2018-0261-SG filed on April 9, 2018 in the Delaware Court of Chancery (the “State Court Action”) to this Court pursuant to 28 U.S.C. § 1446. Copies of the process and pleadings served on Defendant in the State Court Action, including a copy of the complaint (the “Complaint”), are attached as Exhibit A.

Background

1. On April 9, 2018, Plaintiff Temsa Ulaşım Araçları Sanayi ve Ticaret A.Ş. (“Plaintiff”) commenced this action against Defendant in the Delaware Court of Chancery.
2. Defendant was served with the Complaint on April 11, 2018 and filed this notice of removal within the 30-day time period provided by 28 U.S.C. § 1446(b).
3. The claims set forth in the Complaint allegedly arise out of certain agreements entered into by the parties, including a Distribution Agreement entered into by the parties on February 2, 2010 and amendments thereto, as well as a Security Agreement entered into on January

5, 2016. Specifically, the Complaint includes claims for (i) declaratory relief, (ii) specific performance, and (iii) imposition of a constructive trust.

Basis for Removal

4. Removal is proper because there is complete diversity between the parties. 28 U.S.C. § 1332(a); 28 U.S.C. § 1441(b). As set forth below, Plaintiff is a citizen of the Republic of Turkey, and Defendant is a citizen of the States of Nevada, Minnesota, and California.

5. Plaintiff is a foreign corporation organized under the laws of the Republic of Turkey. Defendant is a limited liability company organized under the laws of the State of Delaware. For purposes of diversity jurisdiction, federal courts look to the citizenship of an LLC's members to establish the citizenship of the LLC itself. *Lincoln Benefit Life Co. v. AEI Life, LLC*, 800 F.3d 99, 104-105 (3d Cir. 2015) (internal quotations omitted) (citizenship of LLC is determined by citizenship of its members). Defendant has five members, each of whom is an individual. Those individuals are citizens of the following states: Nevada, Minnesota, and California. Two members are citizens of Nevada, another two members are citizens of Minnesota, and the remaining member is a citizen of California. Defendant is therefore a citizen of Nevada, Minnesota, and California.

6. The amount in controversy exceeds \$75,000. Plaintiff has sought equitable relief in the State Court Action, including injunctive and declaratory relief. These types of requests are valued by looking to the value of the object of the litigation. *BBDova, L.L.C. v. Auto. Techs., Inc.*, 2005 U.S. Dist. LEXIS 7451, at *7 (D. Del. Feb. 25, 2005) (“the Supreme Court has decided that when a complaint does not explicitly quantify the value of the remedy sought, such as when declaratory or injunctive relief is requested, the court must look elsewhere to determine the ‘value of the object of the litigation.’”); *see also Barbiero v. Kaufman*, 580 Fed. App'x. 107, 110 (3d Cir.

2014) (“Where, as here, a plaintiff seeks injunctive relief, ‘the amount in controversy is measured by the value of the right sought to be protected by the equitable relief.’”). Thus, “[t]he value of the object of the litigation is the amount in controversy.” *BBDova*, 2005 U.S. Dist. LEXIS 7451, at *7. Moreover, when seeking the imposition of a constructive trust, if the value of the rights to be impounded exceeds \$75,000, such could be the basis for satisfying the amount in controversy. *Louis Dolente & Sons v. U.S. Fidelity & Guaranty Corp.*, 252 F. Supp. 2d 178, 180 (E.D. Pa. Mar. 24, 2003) (citing *Feldman v. New York Life Ins. Co.*, 1998 U.S. Dist. LEXIS 2301, n.2 (E.D. Pa. Mar. 14, 1998)).

7. Here, Plaintiff seeks injunctive and declaratory relief, as well as the imposition of a constructive trust relating to certain products and collateral, which include motor coaches and spare parts manufactured by Plaintiff. Plaintiff’s requested injunction seeks to enjoin Defendant from taking certain actions, including: (i) “Moving the Products and the Collateral from its current locations;” (ii) “Renting the Products and the Collateral to any party;” (iii) “Taking any action to detriment [sic] of the Property and the Collateral;” (iv) “Withholding proceeds from the sale of the Products and the Collateral;” and (v) “Taking any action to disparage, tarnish, or impugn Temsa’s good will and professional reputation.” This relief is directed towards the alleged protection of the Products and Collateral.¹ The declaratory relief sought is similarly geared towards the alleged protection and return of the Products and Collateral, as Plaintiff seeks declarations that, among other things (i) “Defendant is prohibited from using the Products and Collateral for any purpose without Temsa’s written consent;” (ii) “Defendant is prohibited from moving the Products or Collateral from the locations designated in the Security Agreement or otherwise concealing the

¹ The capitalized terms “Products” and “Collateral” shall have the meanings ascribed to them in the Complaint.

existence and/or location of the Products and Collateral from Temsa;” and (iii) “Defendant is obligated to turn over the Products and Collateral to Temsa, or in the alternative, Temsa is authorized to compel turnover or recovery of the Products and the Collateral.”

8. Thus, the Products and Collateral – which include motor coaches and spare parts manufactured by Plaintiff – are the objects of the litigation. Individually, each motor coach has a value exceeding \$75,000. Plaintiff ultimately is seeking the return of multiple motor coaches to it and/or the imposition of a constructive trust over the Products and Collateral. Therefore, the amount in controversy in the litigation exceeds \$75,000.

The Procedural Requirements for Removal Are Met

9. Accordingly, this action is removable to this Court pursuant to 28 U.S.C. § 1441(b) and (c).

10. Copies of all pleadings, process, orders, and other filings in the State Court Action are attached to this notice as required by 28 U.S.C. § 1446(a).

11. Defendant will promptly file a copy of this notice of removal with the clerk of the Delaware Court of Chancery where the suit has been pending. *See* 28 U.S.C. §§ 1446(a), (d).

Conclusion

12. Defendant asks that the Court remove this suit to the United States District Court for the District of Delaware pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

CHIPMAN BROWN CICERO & COLE, LLP

/s/ Gregory E. Stuhlman

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Dated: May 8, 2018

Attorneys for Defendant

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Temsa Ulasim Araclari Sanayi Ve Icaret A.S.

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 David A. White, Esq., Matthew J. Rifino, Esq., Philip D. Amoa, Esq.,
 McCarter & English, LLP, Renaissance Center, 405 N. King St., Suite
 800, Wilmington, Delaware 19801

DEFENDANTS

CH Bus Sales LLC f/k/a CH Trading Company

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
 Joseph B. Cicero, Esq., Gregory E. Stuhlman, Esq., Stephanie H.
 Dallaire, Esq., Chipman Brown Cicero & Cole, LLP, 1313 N. Market
 St., Suite 5400, Wilmington, Delaware 19801, 302-295-0191

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input checked="" type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deparation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	SOCIAL SECURITY	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 480 Consumer Credit
<input checked="" type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice		<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 462 Naturalization Application	
		<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 465 Other Immigration Actions	
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Recopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Sections 1332, 1441(a) and 1446(a)

Brief description of cause:

Action in equity based on breach of contract

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.**DEMAND \$**CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

5/8/18

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE